

AI-EP



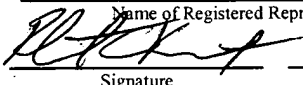
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 10/099,697  
Filed: March 15, 2002  
Inventors:  
Sridatta Viswanath, et al.

Examiner: Rudy, Andrew J.  
Group/Art Unit: 3627  
Atty. Dkt. No: 5681-90200

Title: Line Item Approval Processing in  
an Electronic Purchasing System  
and Method

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Commissioner for Patents, Alexandria, VA 22313-1450, on the date indicated below.

Robert C. Kowert  
Name of Registered Representative  
  
Signature Date  
March 29, 2006

PETITION UNDER 37 CFR 1.144

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

This paper is submitted as a petition under 37 CFR 1.144 from the restriction requirement made final in the Office Action dated September 21, 2005.

In the Office Action dated June 14, 2005, the Examiner presented a restriction requirement requiring election of one of three enumerated inventions. Applicants subsequently elected Invention II (as enumerated by the Examiner) with traverse and presented reasons for traversal in the response filed July 5, 2005. In the Office Action dated September 21, 2005, the Examiner acknowledged Applicants' timely traversal; however, the Examiner made the restriction requirement final. Applicants hereby petition for withdrawal of the restriction requirement for at least the following reasons.

Applicants traverse the restriction between Inventions II and III on the grounds that the Examiner did not state any reason at all for requiring restriction between Inventions II and III. The Examiner gives reasons for requiring restriction

between Inventions I and III and between Inventions I and II, but the Examiner does not give any reasons for requiring restriction between Inventions II and III. In the Office Action of September 21, 2005 in which the Examiner responded to Applicants' traversal, **the Examiner still failed to give any reason at all for requiring restriction between Inventions II and III.** Therefore, Applicants request that the restriction requirement between Inventions II and III be removed on the grounds that the Examiner has failed to provide any reasons whatsoever for requiring restriction between Inventions II and III.

In regard to the restriction between Inventions I and II, the reason for restriction given by the Examiner is that the "subcombination has separate utility such as an inventory management database." However, embodiments of both claims 1 and 15 may be used in conjunction with an inventory management database. A proper restriction requirement requires the Examiner to expressly and correctly identify a separate utility. The Examiner is incorrect that an inventory management database is a separate utility. There is nothing in Applicants' disclosure that precludes either Invention I or II from being used in conjunction with an inventory management database. Therefore, the Examiner has not stated a proper restriction requirement. In response to this argument, the Examiner states in the Office Action of September 21, 2005 that "another utility may be an authentication of a template and user data without using a process manager." However, neither claim 1 (Invention I) nor claim 15 (Invention II) requires that a process manager be used to authenticate a template and user data. In fact neither Invention I nor Invention II has anything to do with the authentication of a template and user data. Any mechanism could be used with either Invention I or Invention II to authenticate a template and user data regardless of the presence of a process manager. According to M.P.E.P. § 806.05(c):

The burden is on the examiner to suggest an example of separate utility. If applicant proves or provides an argument, supported by facts, that the utility suggested by the examiner cannot be accomplished, the burden shifts to the examiner to document a viable separate utility or withdraw the requirement.

The Examiner has failed to meet the required burden to establish a separate utility. Applicants have provided reasons showing that neither of the separate utilities suggested

by the Examiner are actually separate for one invention and not the other. The facts in support of Applicants' argument are that nothing in Applicants' disclosure or claims precludes the utilities suggested by the Examiner from being practiced for both Invention I and Invention II. Thus, the utilities suggested by the Examiner are clearly not separate utilities. The Examiner has clearly failed to meet the requirement of M.P.E.P. § 806.05(c) to "document a viable separate utility". Therefore, the restriction requirement between Inventions I and II must be withdrawn.

In regard to the restriction between Inventions I and III, the reason for restriction given by the Examiner is that "the apparatus [of Invention I] can be used to practice another materially different process, e.g. a point of sale device." However, a point of sale device is a device, not a materially different process. Therefore, the Examiner does not appear to have given an example of a materially different process. Moreover, neither claim 1 nor claim 28 excludes the use of a point of sale device. A proper restriction requirement requires the Examiner to expressly and correctly identify either a materially different process or a materially different apparatus. Since neither claim 1 nor claim 28 excludes the use of a point of sale device, the Examiner has not made the required showing. In response to this argument, the Examiner states in the Office Action of September 21, 2005 that "the reason for restriction [between Inventions I and III] is the process may be used as inventory tracking using a point of sale device." However, even the most cursory reading of Applicants' disclosure and claims reveals that neither Invention I nor Invention III has anything to do with inventory tracking using a point of sale device. Neither claim 1 (Invention I) nor claim 28 (Invention III) precludes inventory tracking using a point of sale device. According to M.P.E.P. § 806.05(e): "The burden is on the Examiner to provide reasonable examples [of a process or apparatus] that recite material differences." Since neither claim 1 (Invention I) nor claim 28 (Invention III) precludes inventory tracking using a point of sale device, Applicants assert that the Examiner has failed to meet his burden to provide examples of another materially different apparatus or process as required by M.P.E.P. § 806.05(e). Therefore, the restriction requirement between Inventions I and III must be withdrawn.

Furthermore, to establish a proper restriction requirement, the Examiner must show “reasons why there would be a serious burden on the examiner if restriction is not required”. M.P.E.P. § 808. In regard to this requirement, the Examiner stated in the Office Action of June 14, 2005 that the inventions “have acquired a separate status in the art as shown by their different classification.” However, the Examiner’s reliance of a different classification to show a separate status in the art is misplaced because the purported classification is clearly incorrect. For example, the Examiner states that Invention I is classified as class 235, subclass 382 and that Invention II is classified as class 235, subclass 385. According to the Manual of Classification, the definition of class 235 is for registers such as cash-registers, fare-registers, voting machines and calculators. Subclass 382 is indented from subclasses 375 and 380 and is thus defined as pertaining to permitting access to credit or identification card systems controlled by data-bearing records. Subclass 385 is indented from subclasses 375 and is thus defined as pertaining to inventory systems controlled by data-bearing records. From even the most casual reading of Applicants’ disclosure and claims, anyone of ordinary skill in the art would recognize that these classifications are incorrect. Although the claimed invention could perhaps be employed on or in conjunction with a register type device, that is clearly not the focus Applicants’ disclosed subject matter. Applicants’ disclosed subject matter pertains to the field of computer-based procurement systems (electronic procurement) which typically may involve communications over a network such as the Internet. Claim 1 (Invention I) does not require (or exclude) any aspect of permitting access to a credit or identification card system. Thus the classification of Invention I as class 235, subclass 382 is clearly incorrect. Likewise, claim 15 (Invention II) does not require (or exclude) any aspect of compiling a record of items on hand (inventory system). Thus the classification of Invention II as class 235, subclass 385 is clearly incorrect.

Since the purported classifications are obviously incorrect, it is improper for the Examiner to rely upon these faulty classifications to establish “a serious burden on the examiner if restriction is not required” as required M.P.E.P. § 808. Since the Examiner’s basis for establishing a “serious burden” has been shown to be flawed, Applicants’ assert

that the Examiner has not established the necessary elements of a *prima facie* restriction requirement. Therefore, the Examiner's restriction requirement must be withdrawn.

## CONCLUSION

In light of the above remarks, Applicants request that the restriction requirement be withdrawn.

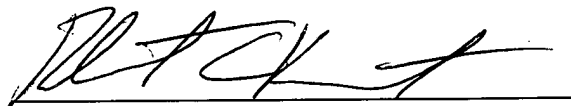
If any extension of time (under 37 C.F.R. § 1.136) is necessary to prevent the above referenced application from becoming abandoned, Applicants hereby petition for such extension. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert & Goetzel PC Deposit Account No. 50-1505/5150-52901/RCK.

Also enclosed herewith are the following items:

☒ Return Receipt Postcard

☐ Other:

Respectfully submitted,



Robert C. Kowert  
Reg. No. 39,255  
ATTORNEY FOR APPLICANT(S)

Meyertons, Hood, Kivlin, Kowert & Goetzel PC  
P.O. Box 398  
Austin, TX 78767-0398  
Phone: (512) 853-8850

Date: February 16, 2004